THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12508 OF 2000

13th December, 2005

Between:

Dr. K.Sukumar …Petitioner

A N D

1. The Government of Andhra Pradesh

Municipal Administration, Secretariat, Hyderabad

and others.

…Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12508 OF 2000

O R D E R :

1. This writ petition has been filed by the petitioner with a prayer to issue writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in not paying the compensation or providing alternative

site as resolved earlier in Resolution No. 565 dated 30th September, 1998 and Resolution No. 324 dated 31-7-1998 as illegal and arbitrary.

2. The petitioner claims that he is owner of property to an extent of Ac.1-47 cents comprising Survey No.1197/1 situated at Anantapur. When 3rd respondent attempted to lay a road on his land, he along with his brother filed O.S.No.462 of 1987 on the file of the Principal District Munsiff, Ananthapur. The suit came to be decreed by judgment dated 13-12-1988. In spite of the judgment passed in his favour, the 3rd respondent-Municipality did not stop its activities in laying the road and therefore, the petitioner filed W.P.No. 18593 of 1995 and he also moved WPMP and secured interim direction. Subsequently, petitioner filed contempt case No. 674 of 1995 complaining disobedience of the interim direction issued in W.P.No.18593 of 1995. While the matter stood thus, 3rd respondent Municipality passed resolution on 31-7-1998. The resolution reads as follows:

> "*Dr. Sukumar has filed C.C.No.674/95 and W.P.No. 18593 of 1995 in the High Court for non-payment of compensation for acquisition of his land in Sy.No.1997-1 to an extent of 56 cents for laying 80 feet master plan road connecting Subhas Road Steel bridge and Bangalore road and he has consented for the proposal of allotting alternate site of equivalent value in the Municipal reserved land in L.P.No. 600/82 at Engineering College road and has given written consent on 7-7-1998 for withdrawing ten cases.*
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> *The Chairman has order for keeping the proposal before the Council.*
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> *The office note with regard to the laying of road in the applicants land in Sy.No. 1997-1 to an extent of 56 cents and as the applicant's land is situated in layout which was not approved he is entitled for 60% of the extent only i.e. 33.60 cents as per the rules was read over.*
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> *As per the Basic Value Register of Sub-Registrar office the value of 33.60 cents of land of the applicant is Rs.10,56,900/- and the value of land proposed to be allotted in L.P.No.324-1, L.P.No. 600/82 (Engineering College road) to an extent of 66 cents of municipal land is Rs.10,22,080/- and as the market value of both the sites is equal, the opinion of the council is obtained for referring the proposal to the Director of Town and Country Planning.*

Resolution:

Resolution is passed to form a committee with the ward members of 2,14,15,27,32 wards and T.P.O. and the committee is requested to submit a report within a week."

3. After Committee submitted report a further resolution came to be passed on 30-9-1978 by the 3rd respondent Municipality and it is thus:

"In the matter of payment of compensation to the applicant for acquisition of land in Sy.No. 1997-1 for forming 80 feet master plan road and assigning lands in municipal reserved land inL.P.No.600/82 (Engineering College road) a committee has been formed and the committee has been asked to submit a report within a week vide resolution No. 324 dated 31-7-1998.

The committee has submitted a report on 26/8/1998 recommending for allotment of land as per the proposal in L.P.No.600/82 (Engineer College road) to an extent of 66 cents and in addition for allotment of land in L.P.No. 33/89 (Sharada nagar) reserved land as requested by the applicant.

In this context, as the value of 33.60 cents land acquired from the applicant and the value of proposed allotment in L.P.No.324-1 L.P.No.600/82 (Engineering College Road) to an extent of 66 cents is equal as per the Basic value register of Sub-Registrar office, the remarks of T.P.S.-1 were read over that as per rules it is not possible to allot additional land.

Hence the opinion of the council is sought in this regard for allotment of land as compensation to the applicant as the value of both the lands is equal, and for forwarding the proposal to the Government through D.T. and C.

Resolution:

It is resolved to forward the proposals to the Government."

4. Subsequently, the petitioner withdrew the contempt case as well as the writ petition. 3rd respondent-Municipality forwarded the proposal to the Secretary to the Government Municipal Administration and Urban Development, Government of Andhra Pradesh-1st respondent. Since 1st respondent has not passed any orders on the proposal, the petitioner has chosen to approach this Court by invoking jurisdiction under Article 226 of the Constitution of India.

5. Respondents 2 and 3 filed counter-affidavits. M.Sreeranga Chary-Municipal Commissioner has sworn to the counter affidavit filed on behalf of the 3rd respondent. It is stated in the counter affidavit that the petitioner converted the agricultural land into house plot without obtaining the lay out approved by the concerned authorities. It is further stated in the counter affidavit that the notices have been issued to the petitioner to apply for approval of layout and form roads etc.,

6. A fact of recommending the case of the petitioner to the Government for providing alternative site is not disputed in the counter affidavit. It is apposite to refer relevant portion in paras-2 and 3 of the counter affidavit and they are ;

> "*It is submitted that though the petitioner has demarcated 80 ft. wide road, but has not formed the road as per standards. The petitioner has not obtained approval for the layout. The respondent issued a notice on 20-05-1995 directing the petitioner to apply for approval of the layout to form the road as per the standards etc., otherwise this respondent will execute and form the road and recover the expenses under Section 187 (2) of A.P. Municipalities Act, 1964. As there is no reply from the petitioner, another notice is issued on 24-07-1995, the petitioner's council replied stating that a reply to the notice will be given in due course. Without giving any reply the petitioner filed W.P.No. 18593/95 in the High Court of A.P. and the same was withdrawn later. All other averments the petitioner may be put to strict proof of the same.*
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> *With reference to para No.4, it is submitted that, the Municipal Council passed a Resolution on 31-07-1998 for allotting alternative site to the petitioner and the proposal is sent to Government vide this office letter Rc.No.5460/93-G1, dated 09-02-1999. All other averments the petitioner may be put to strict proof of the same".*

6. Syed Mazhar Hussain has sworn to the counter affidavit filed on behalf of the 2nd respondent. It is stated in the counter affidavit that the petitioner is under an obligation under Section 184 of A.P. Municipality Act, 1965 to form a road as per the standards giving access to the sites and connect them to the existing road before disposing of his land as house sites. It is apposite to refer the relevant portion of the counter affidavit and it is thus:

> "*It is true the Municipality in their statement in O.S.No. 462 of 1987 asserted that it had no intention to form 80' wide road and from then had not tried for formation of road also.*

But under Section 184 of A.P.M.Act, 1965, it is the obligation of the land owner to form the road as per standards giving access to the sites and connect them to the existing road before disposing his land as house sites. Further as per Rule 8 of the layout rules 1970 (G.O.Ms.No.62, dt. 28-1-70) the width of the streets and roads in the layout shall conform to the provisions of the General Town Planning Scheme or Master Plan. In this case, the petitioner has demarcated 80' wide road but not formed as per standard, not obtained the approval of layout and not handed over the roads and reserved open spaces to the Municipality. This office has issued a notice on 20-5-95 to the petitioner and his co-owners directing them to form the road as per standard and to handover the reserved site to the Municipality as required under Section 184(b) of the A.P.M.Act, duly applying for approval of layout within 10 days failing which the department will execute the formation of road and the expenses will be recovered from him under Section-187(2) of A.P. M. Act. But, the petitioner has not given satisfactory reply. This office has issued another notice on 24-7-1995 through its standing counsel. Sri K.S. Jayaram, Advocate, Anantapur in his letter dt. 16-8-95 informed on behalf of his client i.e., the present petitioner that reply to the notice will be sent soon. Instead of giving proper reply to this office, the petitioner filed W.P.No.18593 of 1995 in the High Court of Judicature with false material. The Municipality has filed detailed counter with facts of the case before Hon'ble Court. Further the petitioner has filed a contempt case in C.C.No.674 of 1995 to threaten the department and thereby to gain advantage as per his will and wish. Subsequently, the petitioner has stated that he is agreeing to withdraw his writ petition and requested to place the subject before the council for allotment of alternative site to him and accordingly withdrawn the writ petition. There is no promise or assurance of any kind to the petitioner.

7. Heard learned counsel for the petitioner and learned Standing counsel appearing for 3rd respondent Municipality and learned Government Pleader for Respondents No. 1 and 2.

8. Learned counsel for the petitioner submits that the 3rd respondent having laid the road on the patta land of the petitioner cannot be permitted to contend that it is not liable to pay the compensation or provide alternative site as agreed to by the Municipal Council as per the Resolutions dated 31-9-1998 and 30-9-1998. He

further submits that the petitioner withdrawn the earlier writ petition and contempt case because of the resolutions referred to above came to be passed by the 3rd respondent Municipal Council.

9. Learned Standing Council appearing for 3rd respondent-Municipality submits that the petitioner converted the agricultural land into house plots without getting lay out approved and the petitioner himself has shown 80 feet road in the registered sale deeds and thus, the petitioner is not entitled to compensation for the area covered by 80 feet. It is also submitted by him that as per the Andhra Pradesh Municipal Rules, the petitioner is required to form roads on conversion of agricultural land into house sites and even on this score also, the petitioner is not entitled to any compensation.

10. A fact remains that road has been laid on the land owned by the petitioner and his brother. Undisputedly, the petitioner and his brother converted agricultural lands into house plots without there being any approved lay out. Under Rule 10 of the Andhra Pradesh Municipalities (Lay Out) Rules, 1970, 5% of the gross area covered by the lay out with not more than 8 plots per gross Hectare over and above this for the increase of every two plots per gross hectare, the open spaces to be provided shall increase by one more per cent, such open space shall, however, be limited to 10% a maximum, irrespective of the size of plots when minimum, extent and width safety as per sub-rule (1) of Rule 9 of layout Rules. 3rd respondent Municipality passed resolutions taking into account the lay out being not approved. As per the resolutions, 60% of the total extent of land alone has been taken into account for awarding alternative site. Keeping in view of the above said fact, the 3rd respondent Municipality recommended the case of the petitioner to the 1st respondent.

11. It is for the 1st respondent to take appropriate decision. In that view of the matter, I deem it appropriate to dispose of the writ petition with a direction to the 1st respondent to pass appropriate orders on the recommendation made by 3rd respondent-Municipality, keeping in view the Andhra Pradesh Municipalities (Layout) Rules, 1970, within eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is disposed of. No order as to costs.

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Justice B.Seshasayana Reddy

13th December, 2005

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 12508 OF 2000

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13th December, 2005

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